

THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

DAIMLERCHRYSLER,)	
)	
Plaintiff,)	
)	
v.)	C.A. NO. 05A-05-005-FSS
)	
LANA AAKALA,)	
)	
Defendant.)	

Submitted: January 3, 2006
Decided: May 31, 2006

ORDER

Upon Appeal From the Industrial Accident Board – *AFFIRMED*

This is another worker's compensation case stemming from an industrial accident in DaimlerChrysler's paint shop.¹ This time, it is DaimlerChrysler that claims the Board's decision is not supported by substantial evidence. As it often is in worker's compensation matters, Appellant presented a potentially powerful case to the Board but lost.² Hence, an appeal.

¹ Compare *Regis v. DaimlerChrysler Corp.*, 869 A.2d 328 (Del. 2005) (Affirming Industrial Accident Board's decision denying employee benefits.).

² Compare *State v. Donahue*, Del.Super., C.A. No. 05A-02-007, Silverman, J. (Feb. 27, 2006)(ORDER).

On April 15, 2005, the Industrial Accident Board awarded benefits to Lana Aakala because a SUV's liftgate clunked her in the head. The Board considered medical experts' conflicting opinions about whether Aakala's widely assorted physical and psychiatric symptoms were caused by the industrial accident or her pre-existing condition. The challenge to the Board came partly from the fact that due to pre-existing psychiatric problems, Aakala exaggerates physical complaints. The Board found that Aakala's doctors sorted out her symptoms more convincingly than DaimlerChrysler's. The Board's conclusion was not unassailable, but it is reasonable.

I.

On August 23, 2002, Aakala was working in the paint shop at DaimlerChrysler's plant in Newark, Delaware. While working on a Durango, Aakala, an inexperienced worker, removed the rod holding up the back liftgate. The thirty-eight pound liftgate fell down, pinning Aakala between the liftgate and the vehicle. The liftgate struck her on the head, neck and shoulder. The blow left Aakala dizzy, nauseated and "very off balance." Aakala believed she briefly lost consciousness. And, the same day, she reported her injury to the company's medical department.

Following the accident, Dr. Serra, an occupational and environmental specialist employed by DaimlerChrysler, saw Aakala. He believed that her physical ailments were greatly exaggerated. While Dr. Serra agreed that Aakala had an industrial accident, he did not agree that it caused her complaints.

After she was hurt, the plant's medical department told Aakala to follow-up with her primary care physician, Dr. Schroyer. Aakala's complaints included balance instability and a "[l]ot of pain in my neck and my shoulder, my arm, my head." Dr. Schroyer ordered testing and told Aakala to continue treatment with DaimlerChrysler's physician. A CT scan and an MRI of her brain, however, were normal.

On September 12, 2002, Aakala saw a physiatrist, Dr. Ufberg, for treatment of the injuries suffered in the workplace accident. Dr. Ufberg thought Aakala was a good historian. Dr. Ufberg also knew that Aakala is bi-polar and she was seeing a psychiatrist, Dr. Seltzer. Dr. Ufberg also knew that Aakala had been assaulted prior to the workplace accident and he had reviewed Dr. Schroyer's records.

Aakala had been assaulted in June 2002. She took blows to the head, face and arms. Dr. Ufberg testified that Aakala returned to work after this incident "working on her job on the line without great difficulty." Aakala was assaulted again in August 2002, but apparently was unharmed.

Dr. Ufberg concluded that Aakala's "complaints of dizziness and balance difficulties, neck, right shoulder, slope, right shoulder pain, stiffness, numbness in the fingers of her right hand, neck pain going down her right arm and headaches are related to work." He excused Aakala from work and referred her to an otolaryngologist to check for acoustic trauma.

Dr. Ufberg treated Aakala regularly, seeing her approximately every two months. In November 2002, he ordered an EMG study, which revealed cervical radiculopathy. An MRI in December 2002 revealed bulges in her cervical spine and mild bursitis in her shoulder. Aakala also had a problem with her balance system. Dr. Ufberg testified that the liftgate hitting Aakala's head and ear was enough to cause these problems, which she did not complain about until after the accident.

On September 18, 2002, Aakala saw the otolaryngologist, Dr. Robinson. Aakala reported hearing loss in her right ear, dizziness and balance difficulty. Dr. Robinson performed a Rhomberg's Test, which indicated hearing loss due to acoustic trauma. Aakala had an abnormal rotary chair test, which indicated a balance problem. Aakala also had an abnormal posturography test. Dr. Robinson did not believe that Aakala had accident-related low frequency hearing loss. He attributed Aakala's permanent balance problems and dizziness, however, to the accident.

In 2001, Aakala had been hospitalized for psychiatric reasons and she was treated for bi-polar disorder by Dr. Seltzer since 2001. The psychiatrist was aware that Aakala had been assaulted. He testified that Aakala's condition did not change after she was assaulted in June 2002. Dr. Seltzer further testified that Aakala exhibited increased anxiety and increased depression after the industrial accident. Dr. Seltzer also diagnosed Aakala with new post traumatic stress disorder symptoms, which he attributed to the accident.

Dr. Fink, a neurologist, examined Aakala in January 2003 and October 2004. Dr. Fink believed that Aakala's complaints of pain were disproportional to her physical and diagnostic exam findings. Dr. Fink also did not think that the accident could have caused Aakala's reported injuries. Dr. Ufberg testified that he was aware of Dr. Fink's opinions and Dr. Ufberg disagreed with them in important respects. Dr. Ufberg spoke comprehensively and authoritatively about Aakala's entire, medical situation, including her accident and non-accident related problems. He was emphatic that the accident caused "neck, right upper extremity pain [and] balance problems." His opinions were based, in part, on objective testing, including an EMG and an MRI, discussed above.

II.

Because this is an appeal, the court's role is circumscribed. As to questions of law, the review is plenary. As to the facts, the court does not examine the evidence and make its own findings. The court must uphold the administrative decision if it was legally sound and based on substantial evidence.³ Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁴

³ *State v. Cephas*, 637 A.2d 20 (Del. 1994).

⁴ *Streett v. State*, 669 A.2d 9, 11 (Del.1995).

III.

It is undisputed that Aakala was struck by the liftgate. DaimlerChrysler's Dr. Serra stated that Aakala had "a paint mark across the ear and redness on the cartilage eluding [*sic*] the head area that was affected" following the accident. Although Aakala was in an industrial accident, the Board found that Aakala was not credible. The Board found her disingenuous about the accident and its after-effects. The Board further found that Aakala was not motivated to return to work, despite her claims to the contrary. The Board did not find that her testimony was fraudulent. Her testimony was simply unreliable. Absent credible testimony from Aakala, the case was a traditional battle of experts. As to the experts, the Board found that the medical testimony in Aakala's favor was "overwhelming."

In summary, the Board heard testimony from five doctors. Three doctors testified that Aakala's complaints were caused by the liftgate. Two testified that her complaints were not. The Board found Aakala's treating doctors' testimony persuasive and, while not entirely unopposed, it was unrebutted. As fact finder, the Board could accept one expert's opinion testimony and disregard other's.⁵

DaimlerChrysler argues that the Board's decision is not supported by substantial competent evidence because the Board found Aakala's testimony not

⁵ *DiSabatino Bros. Inc. v. Wortman*, 453 A.2d 102, 106 (Del. 1982); *Zenith Products Corp. v. Rodriguez*, Del. Super., C.A. No. 05A-09-005, Ableman, J. (March 3, 2006) (ORDER).

credible, yet it relied on medical testimony based on Aakala's subjective complaints. DaimlerChrysler concludes that because the Board found Aakala not credible and her testimony disingenuous, the Board should have rejected her physicians' opinions.

Although the Board found Drs. Serra's and Finks' testimony that Aakala was a symptom magnifier persuasive, that was not enough to discredit her treating physicians' persuasive testimony that her symptoms were caused by her workplace accident. As presented above, those opinions were based in large measure on objective findings and not merely Aakala's word. The Board's hearing officer summed up the record and the reasons for its decision nicely.

IV.

For the foregoing reasons, the Board's April 15, 2004 decision awarding compensation is ***AFFIRMED***.

Judge

cc: Prothonotary
pc: Scott L. Silar, Esquire
Elizabeth Barnes Lewis, Esquire